

INADEQUATE INTERNATIONAL FINANCIAL INSTITUTION ASSISTANCE FOR ADAM SMITH'S SECOND DUTY OF THE SOVEREIGN: PROTECTING AGAINST INJUSTICE

*By John A. Boyd**

I. INTRODUCTION

This article attempts a partial answer to the important question—what changes should be made in law and policy at the six major International Financial Institutions (IFIs), consisting of the International Monetary Fund (IMF), the World Bank, and the regional development banks in Africa, Asia, Europe and Latin America (the African Development Bank, the Asian Development Bank, the European Development Bank, and the Inter-American Development Bank, respectively). This article argues that to improve their performance, the IFIs need to place far greater emphasis on Adam Smith's second duty of the sovereign, "that of protecting, as far as possible, every member of the society against injustice or oppression of every other member of it, or the duty of establishing an exact administration of justice."¹ Accordingly, IFIs must place greater emphasis in developing countries, especially the poorest countries, on:

- 1) Removing legal discrimination against women through enforcement of relevant legislation including new legislation where appropriate;
- 2) Removing legal discrimination against the poor, including poor indigenous peoples and minorities, through enforcement of relevant legislation including new legislation where appropriate;
- 3) Supporting good governance through law, especially corporate governance;
- 4) Strengthening legal frameworks for freer trade through fair trade;
- 5) Protecting, through environmental law, the ecological integrity of the earth;

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1. 2 ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS, bk. V, ch. I, at 309 (Edwin Cannan ed., University of Chicago Press, 1952) (1776).

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- 6) Combating corruption through improved practice of the rule of law; and
- 7) Improving legal education in law schools and judicial academies.

To accomplish these seven substantive tasks, which constitutes the needed, new legal infrastructure within IFIs, the World Bank should also appoint a lawyer or judge as a new Senior Vice-President. The new Senior Vice-President should be responsible for, in conjunction with law schools and judicial institutions worldwide, the administration and public reporting of significant, ongoing legal assistance programs, projects, and operations.

II. IN A NUTSHELL: THE CRUCIAL PROBLEMS CONFRONTING IFIS

A. *Poverty*

About one billion members of the world's population survive on less than one U.S. dollar a day.² Of these extremely poor people, slightly more than 200 million live in Sub-Saharan Africa, slightly more than 400 million live in South Asia, and about 200 million live in East Asia and the Pacific.³ These figures present a significant challenge for IFIs and the more than six and one half billion people living today. Nevertheless, these figures are far more favorable than those prevailing in 1981 when the number of people in the world who lived in extreme poverty was nearly 1.5 billion.⁴

B. *Gender Inequality and Fragile States*

To make further progress, the *Global Monitoring Report 2007* indicates that greater international attention should be devoted to gender equality and "fragile states."⁵ Weak institutions and governance, as well as frequent conflict, characterize fragile states, which compromise nine percent of the developing world's population.⁶ According to the *Global Monitoring Report 2007*, the following 33 countries and one territory are currently considered "fragile states":

Afghanistan, Angola, Burundi, Cambodia, Central African Republic, Chad, Democratic Republic of Congo, Republic of Congo, Comoros, Cote d'Ivoire, Djibouti, Eritrea, The Gambia, Guinea-Bissau, Haiti, Lao PDR, Liberia, Mauritania, Myanmar, Nigeria, Papua New Guinea, Sao Tome and Principe, Sierra

2. The World Bank, *Global Monitoring Report 2007: Confronting the Challenges of Gender Equality and Fragile States 1* (2007), available at http://www-wds.worldbank.org/external/default/WDSContentServer/TW3P/IB/2007/04/11/000112742_20070411162802/Rendered/PDF/394730GMR02007.pdf.

3. *Id.* at 23.

4. *Id.*

5. *Id.* at 1-2.

6. *Id.* at 2.

Leone, Solomon Islands, Somalia, Sudan, Timor-Leste, Togo, Tonga, Vanuatu, Uzbekistan, Zimbabwe, and the territory of Kosovo.⁷

C. *Environmental Sustainability, Trade Liberalization, Aid Coordination*

In addition to the challenge of establishing gender equality and assisting in the development of fragile states, the *Global Monitoring Report 2007* identifies two additional risks to the international system: environmental sustainability and “securing the gains from trade liberalization.”⁹ There is also a “pressing need for better aid coordination,” including a need for a more coherent “aid architecture.”¹⁰

D. *Success in China and India Suggests Need for a Pragmatic Approach*

Beyond these problems, there are additional problems confronting the international system. For example, as pointed out recently by James Surowiecki, although China “is a long way from a true free-market economy,” both China and India account for “almost all of the reduction in poverty in the world in the past two decades.”¹¹ Indeed, China’s government controls the utilization of much of its capital and the course of action of many state-owned enterprises.¹² As for India, economic liberalization is complicated by “massive tariffs, strict legal restrictions on foreign ownership and on new businesses, and an aggressive regulatory state.”¹³ Ironically, these two centrally governed countries (with nearly one-third of the population of the world) lack significant characteristics of free-market economies but still account for the greatest reductions in the number of the poor in recent years. These trends support Surowiecki’s conclusion that the world is composed of “complex societies and economies” where policy makers must be “pragmatists rather than evangelists.”¹⁴ This paper argues that pragmatists must place greater emphasis on building sound legal infrastructure similar to the legal infrastructure put in place long ago in Northern Europe, most of the countries in Western Europe, Canada, the United States of America, Australia, New Zealand, and more recently in Chile, the Hong Kong Administrative Region, Japan, Singapore, and some other countries. Such sound legal infrastructure can help ensure that physical infrastructure serves the poor as well as others. Currently, new physical infrastructures, such as a million dollar highways, almost exclusively

7. The World Bank, *Fragile States: List of Fragile States* (2007), <http://go.worldbank.org/HCP9BFLFL0>.

9. The World Bank, *supra* note 2, at 2.

10. *Id.*

11. James Surowiecki, *Better and Better: The Myth of Inevitable Progress*, FOREIGN AFF., July – Aug. 2007, at 132.

12. *Id.*

13. *Id.*

14. *Id.* at 138-39.

serve those of higher incomes. Thus, legal infrastructures in free-market economies need to change and be more pragmatic to provide a better approach to eradicate poverty.

III. WHAT ADVICE DID ADAM SMITH PROVIDE AND WHAT NEW APPROACH IS NEEDED?

A. *Adam Smith's Three Duties of the Sovereign: Defense, Justice, and Public Works*

The World Bank *Articles of Agreement* only permit action based upon economic considerations without interference “in the political affairs of any member.”¹⁵ The World Bank emphasizes economic considerations, and in the view of many, thereby emphasizes Adam Smith’s third duty of the sovereign: “erecting and maintaining those public institutions and . . . public works which . . . [are] of such a nature that the profit could never repay the expense to any individual or small number of individuals . . . chiefly . . . for facilitating the commerce of the society, and . . . for promoting the instruction of the people.”¹⁶ Thus, the World Bank *Articles of Agreement* do not directly relate to Adam Smith’s first duty of “protecting the society from the violence and invasion of other independent societies.”¹⁷ However, the World Bank *Articles of Agreement* do support efforts to advance Adam Smith’s second duty of the sovereign, as suggested by Roberto Dañino, former Senior Vice President and General Counsel of the World Bank from 2003 to 2006. In an article published in the November 2007 edition of *Development Outreach*, Dañino stated that the World Bank can work on “predictable legal framework,” or a legal infrastructure that can have a beneficial effect on economic considerations.¹⁸

B. *The World Bank Emphasizes the Importance of Equal Opportunity But Does Not Give Sufficient Emphasis to Ways of Achieving the Rule of Law*

Governments throughout the world often emphasize Adam Smith’s third duty of the sovereign; constructing “public institutions and public works necessary for the defence of the society,” while providing insufficient attention to the other duties.¹⁹ However, several World Bank publications emphasize the importance of Smith’s second duty of the sovereign, protecting “every member of the society from the violence or injustice of other members.”²⁰ One such example is the 2007 World Bank publication, *Atlas of Global*

15. The World Bank *Articles of Agreement*, Art. IV, § 10.

16. SMITH, *supra* note 1, bk. V, ch. I, pt. 3, at 315.

17. *Id.* at 213.

18. Development Outreach (Nov. 2007), <http://www1.worldbank.org/devoutreach/textonly.asp?id=386>.

19. *Id.*

20. *Id.*

Development: A Visual Guide to the World's Greatest Challenges. The publication suggests themes consistent with Adam Smith's analysis, including problems resulting from institutions favoring the more fortunate and the need for the rule of law:²¹

To achieve broad-based economic growth, all people must have equal opportunity to participate. Equality of opportunity does not mean equal outcomes. However, if all members of society have similar chances to become socially active, politically influential, and economically productive, sustainable long-run development is more likely because the allocation of resources is more efficient. When economic and social institutions systematically favor the interests of those with higher status and greater resources, the economy is likely to be less efficient, missing out on opportunities for innovation and investment. There are many ways to increase the opportunities for poor people Particularly in rural areas, improvements to transportation and communication systems are needed to improve access to markets. Secure tenure to property increases incentives for new investment on the part of rural and urban dwellers. Protection through the rule of law reduces risks and uncertainties that undermine growth.²²

Though the World Bank recognizes the need for both physical infrastructure (such as improvements in transportation and communication systems) and legal infrastructure (as defined above to include efforts to improve legal capacity to combat discrimination against women and the poor; to improve good governance, fair trade, environmental law, and rule of law; and to teach in law schools and judicial academies), the author suggests that the World Bank underemphasizes the importance of legal infrastructure. Below, this paper delineates key problems in developing countries that necessitate placing greater emphasis on both immediate and long-term legal infrastructure assistance from IFIs.

IV. THE ARGUMENT FOR BETTER LEGAL INFRASTRUCTURE

A. Amartya Sen Urges Combating Discrimination Against Women

The biggest problem currently confronting IFIs is poverty, and the most important way to combat poverty is to remove discrimination against women, especially discrimination in the educational and employment opportunities of women. Amartya Sen, winner of the 1998 Nobel Prize in Economic Science, argues in his book *Development as Freedom* that:

21. WORLD BANK, ATLAS OF GLOBAL DEVELOPMENT: A VISUAL GUIDE TO THE WORLD'S GREATEST CHALLENGES 12-13 (2007).

22. *Id.*

24. AMARTYA SEN, DEVELOPMENT AS FREEDOM, 144-145 (Oxford University Press 2001) (1999).

High fertility rates can be seen, with much justice, as adverse to the quality of life, especially of young women, since recurrent bearing and rearing of children can be very detrimental to the well-being and freedom of the young mothers. Indeed, it is precisely this connection that makes the empowerment of women (through more outside employment, more school education and so on) so effective in reducing fertility rates, since young women have a strong reason for moderating birthrates, and their ability to influence family decisions increases with their empowerment.²⁴

In support of this argument, Amartya Sen cites a “comparative study of nearly three hundred districts within India” where “it emerges that women’s education and employment are the two most important influences in reducing fertility rates.”²⁵

Furthermore, Sen argues that:

Empowerment of women, through employment opportunities, educational arrangements, and property rights and so on, can give more freedom to influence a variety of matters such as intra-family division of health care, food and other commodities, and work arrangements as well as fertility rates, but the exercise of that enhanced freedom is ultimately a matter for the person herself.²⁶

For these reasons, Sen emphasizes that “[n]othing, arguably, is as important today in the political economy of development as an adequate recognition of political, economic and social participation and leadership of women.”²⁷

IFIs have recognized the importance of improving the status of women and in removing discrimination against women by improving legal and institutional frameworks for women. For example, a publication authored by the World Bank and the Asian Development Bank (in conjunction with other international organizations) discusses the extent to which “[s]ocial, legal, and political institutions perpetuate gender discrimination and vulnerability.”²⁸ However, few commentators would argue that current efforts by IFIs to combat discrimination against the more than one billion women who earn less

25. *Id.* at 195.

26. *Id.* at 288-89.

27. *Id.* at 203.

28. UNITED NATIONS DEV. FUND FOR WOMEN, WORLD BANK, ASIAN DEV. BANK, UNITED NATIONS DEV. PROGRAMME & DEP’T FOR INT’L DEV. OF THE U.K., A FAIR SHARE FOR WOMEN: CAMBODIA GENDER ASSESSMENT 171 (2004), available at <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EASTASIAPACIFICEXT/CAMBODIAEXTN/0,,contentMDK:20264079~pagePK:141137~piPK:217854~theSitePK:293856,00.html>. See also ASIAN DEV. BANK, SOCIOLEGAL STATUS OF WOMEN IN INDONESIA, MALAYSIA, PHILIPPINES, AND THAILAND (2002), available at http://www.adb.org/Documents/Studies/Sociolegal_Status_Women/default.asp; ASIAN DEV. BANK, GENDER, LAW, AND POLICY IN ADB OPERATIONS: A TOOL KIT (2006), available at <http://www.adb.org/Documents/Manuals/Gender-Toolkit/Gender-Law-Policy-Toolkit.asp>.

than \$2 per day are sufficient.

B. Removal of Legal Discrimination Against the Poor and Poor Minorities

In *Wealth of Nations*, Adam Smith observed that “[n]o society can surely be flourishing and happy, of which the far greater part of the members are poor and miserable.”²⁹ IFIs have correctly stressed the importance of trying to assist the poor so that the world as a whole can flourish and be happy. However, there are still far too many poor people. According to the introductory chapter by Frannie A. Leautier and Blanca Moreno-Dobson in a recent World Bank publication, *Reducing Poverty on a Global Scale: Learning and Innovating for Development*, “[m]ore than half of the people in developing countries—2.8 billion people—live on less than \$2 a day, and 1.2 billion of those people earn less than \$1 a day.”³⁰

Such estimates of the number of impoverished people may suggest that income level defines poverty. However, as Sen points out in *Development as Freedom*:

It is simply not adequate to take as our basic objective just the maximization of income or wealth, which is, as Aristotle noted, ‘merely useful and for the sake of something else.’ For the same reason, economic growth cannot sensibly be treated as an end in itself. Development has to be more concerned with enhancing the lives we lead and the freedoms we enjoy.³¹

Certainly, the quality of institutions, including the legal system, government, and local markets, can have a large impact on the extremely poor. Adam Smith recognized this when he emphasized that “freedom of exchange and transaction” are “part and parcel of the basic liberties that people have reason to value.”³² Accordingly, law and legal frameworks are of crucial importance, particularly with respect to private property:

Private property has proved to be, in terms of results, quite a powerful engine of economic expansion and general prosperity. . . . On the other side, . . . there is also much evidence to suggest that unconstrained use of private property—without restrictions and taxes—can contribute to entrenched poverty and make it difficult to have social support for those who fall behind for reasons beyond their control (including disability, age, illness and economic and social misfortune). It can also be defective in ensuring environmental preservation, and in the development of social infrastructure.³³

29. Smith, *supra* note 1, bk. I, ch. VIII, at 33.

30. Frannie A. Leautier & Blanca Moreno-Dodson, *Introduction* to REDUCING POVERTY ON A GLOBAL SCALE: LEARNING AND INNOVATING FOR DEVELOPMENT 1, 1 (Blanca Moreno-Dodson ed., World Bank 2005).

31. SEN, *supra* note 24, at 14.

32. *Id.* at 6.

33. *Id.* at 61.

In view of these considerations, IFIs have financed projects that guarantee property and other rights. For example, the ADB financed an “*Access to Justice*” program in 2001 designed to deal with many legal and justice issues in Pakistan. Three ADB loans totaling \$350 million financed the Program’s efforts to:

- (1) Enable the poor to exercise their rights guaranteed under the law and to protect their property from being taken away by the bureaucratic or political elite. . . ;
- (2) Promote awareness campaigns about legal rights in the simplified national language, Urdu. . . ;
- (3) Provide, through a legal empowerment fund, free legal advice and advocacy for the poor by civil society groups, including lawyers and NGOs. . . ; and
- (4) Promote affirmative opportunities to encourage the appointment of women judges and provide training courses in gender sensitization for the judiciary and the police.³⁵

Another example is a 2004 ADB grant of \$575,000 entitled “Establishing Legal Identity for Inclusive Development.” The grant was designed to answer questions on “what legal identity can realistically deliver in terms of promoting inclusion, and on how, when, and under what circumstances legal identity actually improves lives in concrete and meaningful ways.”³⁶ The grant-financed research in Bangladesh, Cambodia, and Nepal resulted in both proposed practical solutions and appropriate law and policy reforms.³⁷

C. Strengthen Legal Frameworks Which Support Good Governance, Especially Corporate Governance

(i) Good Governance is Part of Goal 8 of the Millennium Development Goals:

Good governance initiatives form Goal Eight of the Millennium Development Goals (MDGs), entitled “Develop a Global Partnership for Development.” The first target under Goal Eight is to “[d]evelop further an open, rule-based, predictable, nondiscriminatory trading and financial system (including a commitment to good governance, development, and poverty reduction, nationally and internationally).”³⁸ To implement this goal, the World Bank developed Worldwide Governance Indicators (WGI) to analyze

35. Asian Development Bank, *Delivering Justice for the Poor in Pakistan* (December 20, 2001), <http://www.adb.org/Documents/News/2001/nr2001207.asp>.

36. Asian Development Bank, RETA 6188: *Establishing Legal Identity for Social Inclusion – Regional*, <http://www.adb.org/Documents/PRF/REG/RETA6188.asp> (last visited Nov. 6, 2007), Asian World Bank, *Legal Identity for Inclusive Development* v (2007); available at <http://www.adb.org/documents/books/legal-identity/legal-identity.pdf>.

37. *Legal Identity for Inclusive Development*, *supra* note 36.

38. The World Bank, *Global Monitoring Report 2007: Millennium Development Goals: Confronting the Challenges of Gender Equality and Fragile States* xviii (2007), available at http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2007/04/11/000112742_20070411162802/Rendered/PDF/394730GMR02007.pdf.

world countries and territories between 1996-2002 within six dimensions of governance: (1) voice and accountability; (2) political stability and absence of violence; (3) government effectiveness; (4) regulatory quality; (5) rule of law; and (6) control of corruption.³⁹

Kaufmann, Kraay, and Mastruzzi, while acknowledging difficulties in aggregating data for WGI, find that WGI provide meaningful guidance on improvements and deterioration in some dimensions:

This latest set of aggregate indicators, are based on hundreds of specific and disaggregated individual variables measuring various dimensions of governance, and taken from 33 data sources provided by 30 different organizations. The data reflect the views on governance of public sector, private sector and NGO experts, as well as thousands of citizen and firm survey respondents worldwide. We also explicitly report the margins of error accompanying each country estimate. These reflect the inherent difficulties in measuring governance using any kind of data. We find that even after taking margins of error into account, the WGI permit meaningful cross-country comparisons as well as monitoring progress over time. In less than a decade, a substantial number of countries exhibit statistically significant improvements in at least one dimension of governance, while other countries exhibit deterioration in some dimensions.⁴⁰

Some critics, however, question the “utility” of such indicators.

The Worldwide Governance Indicators . . . are used to allocate hundreds of millions of dollars of foreign aid. Critics have focused on problems of bias or lack of comparability that raise questions about the utility of these indicators. However, a more fundamental question is whether they measure what they purport to measure. Construct validity remains poorly understood in both political science and economics, and as a consequence, policymakers and researchers are relying on indicators that represent untested hypotheses about the nature of governance. The risk is that they may be relying on wrong data, rather than poor data.⁴¹

Lawyers may wish to help strengthen arguments demonstrating the validity of those components of WGI relating directly to law, particularly (as numbered above) (4) regulatory quality, (5) rule of law, and (6) control of corruption. However, the need to strengthen these three components in

39. World Bank Institute Multimedia Center, *Governance Matters 2007: Worldwide Governance Indicators, 1996-2006*, <http://info.worldbank.org/governance/wgi2007/> (last visited Nov. 6, 2007).

40. Daniel Kaufmann, Aart Kraay & Massimo Mastruzzi, *Governance Matters VI: Governance Indicators for 1996-2006* (World Bank Policy Research, Working Paper No. 4280, July 2007), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=999979 (last visited Nov. 6, 2007).

41. Melissa Thomas, *What Do the Worldwide Governance Indicators Measure?* (Aug. 1, 2007), http://ssrn.com/sol3/papers.cfm?abstract_id=1007527 (last visited Nov. 6 2007).

developing countries appears sufficient for action by IFIs now.

(ii) Adam Smith's Definition of Corporate Governance Focused on Limited Liability, Which Causes Significant Problems in Developing Countries:

Adam Smith saw a key distinction between a partnership and a "joint-stock company" (the latter phrase often being utilized during his life to denote a corporation).⁴² Adam Smith pointed out that in a partnership, each partner is liable for the debt of the company, but in a joint stock company ("incorporated or chartered company"), each partner is "bound only to the extent of his share."⁴³ This concept of limited liability has helped attract investments in corporations, and has helped make them so successful.

However, limited liability can still cause significant problems if damage caused by the corporation exceeds the limited liability share value of the corporation. For example, Joseph E. Stiglitz, a former World Bank chief economist and recipient of the Nobel Prize in Economics, provides an example of the Ok Tedi gold and copper mine in Papua New Guinea, which extracted "\$6 billion worth of ore" but was unable to provide compensation for the damage caused by the pollution, leaving the people of Papua New Guinea to pay the vast cleans-up costs.⁴⁴

Adam Smith doubted that corporations improved trade, noting that "[t]he pretence that corporations are necessary for the better government of the trade, is without any foundation."⁴⁵ Nevertheless, the success of modern corporations has been extraordinary, especially when compared to the relative lack of success of the economies of many developing countries. In 2004, "the revenues of U.S. car company General Motors were \$191.4 billion, greater than the GDP of more than 148 countries,"⁴⁶ while in fiscal year 2005, "U.S. retailer Wal-Mart's revenues were \$285.2 billion, larger than the combined GDP of sub-Saharan Africa."⁴⁷

It is true that almost \$200 billion annually is made in foreign direct investment in developing countries.⁴⁸ However, if confronted with unwelcome taxes or regulations, these same corporations can "threaten to move elsewhere."⁴⁹ Accordingly, the appropriate regulation of corporate activities is crucial to the future success of a great many developing countries.

(iii) A New Definition of Corporate Governance With Multiple Goals:

Sir Adrian Cadbury offers a modern definition of corporate governance that focuses on aligning the interests of corporations with those of individuals and society:

42. SMITH, *supra* note 1, bk. V, Ch. 1, pt. iii, art. 1, at 323.

43. *Id.*

44. JOSEPH E. STIGLITZ, MAKING GLOBALIZATION WORK 195 (W.W. Norton & Co. 2006).

45. SMITH, *supra* note 1, bk. 1, ch. X, pt. II, at 56.

46. STIGLITZ, *supra* note 44, at 187.

47. *Id.* at 187-88.

48. *Id.* at 188.

49. *Id.*

Corporate Governance is concerned with holding the balance between economic and social goals and between individual and communal goals. The corporate governance framework is there to encourage the efficient use of resources and equally to require accountability for the stewardship of those resources. The aim is to align as nearly as possible the interests of individuals, corporations and society.⁵⁰

Corporate governance today clearly needs to align more clearly the interests of corporations with the interests of individuals and society, as suggested by Adam Smith in E(i) below as well as by both Joseph E. Stiglitz in C(ii) above and Sir Adrian Cadbury immediately above. Only IFIs are in a position both by their policies and their financial resources to take significant action now.

(iv) Law Plays a Growing, Significant Role in Corporate Governance:

Adam Smith was quite skeptical about the benefit to be derived from corporations and corporate law. Indeed, he wrote that the purpose for the establishment of “all corporations, and the greater part of corporation laws” was the prevention of “reduction[s] of price, and consequently of wages and profit, by restraining . . . free competition.”⁵¹ Nevertheless, given the success of modern corporations, and the potential benefits such corporations can provide, corporate legislation has received a great deal of attention, especially in developing countries. The first obvious suggestion is to have developing countries enact modern corporate legislation. Some suggestions have focused on emphasizing the role of IFIs and other international policy bodies in promoting rules and standards:

International financial institutions, international policy bodies, and standard setters in securities, accounting, and other fields are all well placed to promote better corporate governance in emerging markets through their work on the rules governing the issuance of corporate securities in major capital markets, on standards for accounting and reporting, and on regulatory and legal frameworks pertaining to corporate governance.⁵²

The publication goes on to point out difficulties with satisfying non-financial disclosure standards and improving corporate governance in developing countries:

Although many countries have adopted international financial reporting standards, very few have made progress toward meeting non-financial disclosure standards, particularly with regard to ownership, control, and related-party transactions. Much more needs to be done to instill commitment to sound corporate governance at the national and firm levels in many

50. Corporate Governance Defined, <http://www.corpgov.net/library/definitions.html> (last visited Nov. 15, 2007).

51. SMITH, *supra* note 1, bk. I, ch. X, pt. 2, at 53.

52. WORLD BANK, GLOBAL DEVELOPMENT FINANCE 2007: THE GLOBALIZATION OF CORPORATE FINANCE IN DEVELOPING COUNTRIES 100 (2007).

developing countries.⁵³

Taking another approach, Stiglitz analyzes how reforms in legal systems can align private corporate incentives with the broader public interest in “social costs and benefits,” pointing out that the limited liability principles of corporations were “intended to limit the liability of investors, not to absolve employees, however senior, of responsibility.”⁵⁴ Therefore, Stiglitz argues that “[w]hen a company has egregiously violated a nation’s environmental laws, the CEO and others who made the decisions and took the actions should be held criminally liable.”⁵⁵ Furthermore, legal reforms should provide for civil liability for damages to workers or the environment, and thus establish “greater incentives to act more responsibly and to ensure that . . . employees do so.”⁵⁶ Stiglitz also suggests that part of the solution will be found in establishing better parity between the skills of lawyers for large corporations and lawyers for injured parties in developing countries so that lawyers for injured parties will more likely succeed.⁵⁷

Stiglitz proposes removing some of the legal protection enjoyed by corporations with limited assets because “assets outside the country may be nearly impossible” to attach.⁵⁸ To help overcome problems associated with limited liability corporations operating in developing countries, Stiglitz argues in favor of reformed legal regimes and, if necessary, denying the immunity enjoyed by corporate officers, directors, and shareholders in order to compensate for wrongful acts by corporations:

Any country in which the corporation (or the substantial owners of the corporation) has assets should provide a venue in which suits can be brought or in which enforcement actions to ensure payment of liabilities can be undertaken. . . . To make this effective, it may be necessary to pierce the corporate veil.⁵⁹

The author, in a conversation with a distinguished Nepalese lawyer, was reassured that corporate governance problems in developing countries could be solved in important ways with the enactment of modern corporate legislation. But the lawyer also pointed out that any medium to long-term solution must be based on modern corporate legislation and excellent education for future lawyers. This would enable the future lawyers to gain the skills to more effectively deal with the complex problems of corporations, including the law of property, contracts, criminal law, trade law, and the like. These reforms would be further bolstered if law schools in developing countries could assist in the enactment of modern corporate legislation to increase the quality and effectiveness of corporate governance. In this manner,

53. *Id.* at 101.

54. STIGLITZ, *supra* note 40, at 203.

55. *Id.* at 204.

56. *Id.* at 205.

57. *Id.*

58. *Id.*

59. *Id.* at 206.

the alignment of interests of individuals, society, and corporations can be significantly improved, as suggested above in C(iii).

D. Strengthened Legal Frameworks are Needed to Ensure Fair Trade Throughout the World

(i) Adam Smith Favored Free Trade:

Adam Smith favored free competition, not fair trade, and suggested that corporations restrain free competition in their efforts to “prevent [the] reduction of price, and consequently of wages and profit, by restraining that free competition which would most certainly occasion it, that all corporations, and the greater part of corporation laws, have been established.”⁶⁰ Adam Smith was quite skeptical of any new law designed to narrow competition:

To widen the market may frequently be agreeable enough to the interest of the public; but to narrow the competition must always be against it, and can serve only to enable the dealers, by raising their profits above what they naturally would be. . . . The proposal of any new law or regulation or commerce which comes from this order, ought always to be listened to with great precaution, and ought never be adopted till after having been long and carefully examined, not only with the most scrupulous, but with the most suspicious attention.⁶¹

(ii) The World Trade Organization (WTO) Emphasizes Legislation to Achieve Freer Trade through Fair Trade:

The WTO is dedicated to the goal of widening the market of free trade by dealing with the rules of trade between nations. A great many skilled professionals, particularly lawyers and judges in developing countries, will be needed to achieve this goal. This is perhaps made clear by one example involving Cambodia’s accession to the WTO. To fulfill its pledge upon joining WTO, Cambodia, a fragile state, is currently drafting and enacting a wide range of trade and investment legislation and regulations, including legislation establishing a civil code as well as dealing with commercial contracts, secured transactions, insolvency (bankruptcy), anti-dumping, countervailing duties and safeguards, a customs code, industrial standards, anti-corruption, and a dozen more related topics.⁶²

The WTO has 151 member states, including Vietnam and Tonga, the last two to join.⁶³ Dozens more countries may join within the next decade.

60. SMITH, *supra* note 1, bk. I, ch. X, pt. 2, at 53.

61. SMITH, *supra* note 1, bk. I, ch. XI, pt. 3, at 110.

62. COUNCIL FOR THE DEV. OF CAMBODIA, CAMBODIA INVESTMENT GUIDEBOOK 10 (2006), <http://www.jica.go.jp/cambodia/english/activities/index.html>.

63. Understanding the WTO: The Organization, http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (last visited Feb. 14, 2008).

65. See KATHARINA PISTOR & PHILIP A. WELLONS, THE ROLE OF LAW AND LEGAL INSTITUTIONS IN ASIAN ECONOMIC DEVELOPMENT 1960-1995 282-86, (Oxford University Press 1999).

Lawyers in each of these countries will likely have to deal with many new legal issues, both in terms of complying with WTO regulations and with WTO requirements for new commercial legislation. Local lawyers will play an especially important role in enacting such trade legislation but may face significant challenges in incorporating the substantive requirements of the new WTO-related legislation into existing local legislation.⁶⁵ Lawyers working in countries not destined to become a member of WTO in the near future will likely play a similarly important role in dealing with international and national trade legislation applicable to their developing economies.

(iii) *The World Bank Emphasizes the Need for Regulations for Financial Globalization:*

A 2007 World Bank publication, *Global Development Finance*, indicates that the benefits from “financial globalization” will need to be protected by developing member country macro-economic and regulatory policies, supporting institutions, and corporations that foster investment and finance.⁶⁶ Such efforts will be necessary to realize benefits of financial globalization:

The key long-term requirement is to sustain, and in some cases extend, the structural changes and institution-building efforts that have made possible the growing involvement of developing-country corporations in global investment and finance. Under way in many countries since early 1990s, those changes include progress toward a floating exchange rate regime (free or managed) or a peg arrangement (especially in the case of new European Union members), carefully phased easing of capital controls in combination with better governance and stronger domestic regulation, and privatization of public enterprise. . . . Far greater efforts are needed to spur the development of well-regulated and liquid local capital markets and to ensure prudential regulation of foreign borrowing by domestic banks and other regulated entities. Such structural improvements would greatly reduce the likelihood of corporate financial distress and vulnerability while promoting the growth of new market mechanisms and the regulatory capacity needed for effective macroeconomic management of the increasingly open economies of the developing world.⁶⁷

(iv) *Nobel Laureate Joseph Stiglitz Urges a Global Competition Law:*

Stiglitz argues in *Making Globalization Work* that because “companies seek a [developing country] home with the weakest labor and environmental laws,” there is a need for regulations designed to help prevent a race to the bottom.⁶⁸ Stiglitz notes that “the benefits to monopolists are global” while “enforcement remains fragmented, with each jurisdiction looking after its own citizens—meaning in practice that no one looks after consumers in small and

66. WORLD BANK, *GLOBAL DEVELOPMENT FINANCE* 2007, at 101 (2007).

67. *Id.* at 102.

68. STIGLITZ, *supra* note 44, at 196.

developing countries.”⁶⁹ To avoid the problems of global monopolies, Stiglitz argues for a global competition law enforced by a global competition authority “allowing both criminal prosecution and civil action in any case in which anti-competitive behavior affects more than one jurisdiction.”⁷⁰

Stiglitz also believes that “international legal frameworks and international courts” are needed to facilitate the functioning of a “global economy,” and to avoid harm caused by “global price-fixing.”⁷¹ In support of this argument, Stiglitz points to a recent US court decision limiting future plaintiffs from bringing suits in foreign courts until after prevailing against perpetrators of price fixing in US courts.⁷² Stiglitz cites this example to demonstrate that the international community needs to “make it easier to pursue global class action suits, either in newly established global courts, or in national courts.”⁷³

E. Strengthened Environmental Law to Protect the Ecological Integrity of the Earth

(i) Adam Smith Recognized Private Interests May Not Be Aligned with Society’s Well-Being:

Though Adam Smith did not focus on environmental issues in his book *Wealth of Nations*, his arguments did take into consideration negative externalities such as environmental pollution. Joseph E. Stiglitz argues that:

Adam Smith has often been misunderstood [in his argument] that individuals, in pursuing their self-interests, would advance the broader interests of society. . . . Building on this logic, many economists believe that the first—some go so far as to say the only—responsibility of corporations is to their shareholders. They should do whatever it takes to maximize stock market value or profits. . . . However, even Smith realized that in an unfettered market economy private incentives are often not aligned with social costs and benefits—and when that happens, the pursuit of self-interest will not result in the well-being of society.”⁷⁵

The example cited above in C. (ii) by Joseph E. Stiglitz concerning the OK Tedi gold and copper mine in Papua New Guinea demonstrates that private incentives in an unfettered market are indeed not always aligned with social costs and benefits, and that such incentives do not always serve the well-being of society. ’

69. *Id.* at 201.

70. *Id.* at 203.

71. *Id.* at 207.

72. *Id.*

73. *Id.* at 208-09.

75. STIGLITZ *supra* note 44, at 189.

(ii) *Reducing Pollution Often Requires Legal Constraints:*

James Surowiecki points out that environmental improvement is often the result of political struggle:

Pollution is the quintessential case of a negative externality and, accordingly, of market failure: since polluters do not pay the cost of their pollution, they will produce more than is socially optimal even if they may reduce their emissions as a byproduct of improvements in overall efficiency. The only way, ultimately, to reduce pollution is to constrain polluters to do otherwise . . . through free-market-driven economic growth, technological change [and other] . . . incentives that the market by itself cannot provide.⁷⁶

(iii) *Value of Natural Ecosystems Services Exceed Value of World GNP:*

Without enforcement of appropriate national and international regulations and implementation of other hard and soft law measures, large scale corporate pollution threatens the ecosystems of the earth that freely provide services with value exceeding “more than the total of the gross national products of all nations combined.”⁷⁷ According to E. O. Wilson, Pellegrino Research Professor in Entomology for the Department of Organismic and Evolutionary Biology at Harvard University:

The living resources of the world—ecosystems and its species—are still largely unexplored. . . . Some ecologists and economists have estimated that the total value of these natural ecosystems, that’s the total amount of services they provide to humanity, is in the vicinity of 30 trillion dollars a year. That’s more than the total of the gross national products of all nations combined. And it’s free! To save and make fuller use of them in a non-obtrusive way is economically valuable to us. To destroy them is to force humanity into an artificial world in which we have to personally manage our water systems, our food supply, and our atmosphere by prosthetic devices day by day instead of relying on powerful organisms to do the work for us.⁷⁸

(iv) *World Bank Protection of the Environment:*

IFIs have taken many steps to protect the environment. For example, the World Bank has established the position of Vice-President for Sustainable Development. Katherine Sierra, the current incumbent, stated the following regarding sustainable development: “[b]y promoting economic growth strategies based on expanded infrastructure which are environmentally responsible and socially acceptable we are bringing a sustainable future closer

76. Surowiecki, *supra* note 11.

77. United Nations Framework Convention on Climate Change (New York, May 9, 1992), 31 International Legal Materials 849 (1992); available at <http://unfccc.int/resource/docs/convkp/conveng.pdf>.

78. See Peter P. Rogers, Kazi F. Jalal, and John A. Boyd, *An Introduction to Sustainable Development* (2nd ed.), London: Earthscan and Glen Educational Foundation, 2008 at page 205.

to today's reality."⁷⁹

Over the last 30 years, the World Bank and other IFIs have played a significant role in drafting and implementing multilateral environmental agreements, including the UN Framework Convention on Climate Change (1992) and the Convention to Combat Desertification (1994). Although IFIs are to be commended for their efforts in promoting environmental law, a truly successful promotion will require the sustained effort of a great many lawyers, judges, administrators, and global citizens. The impact of the aforementioned treaties has been greatly lessened by the many States Parties to those treaties that have failed to enact domestic legislation to enable the implementation of the treaty provisions.⁸¹

F. Combating Corruption Requires Improved Practice of the Rule of Law

(i) Measures to Combat Corruption:

Adam Smith believed that justice is the main pillar supporting social life.⁸² Smith maintained that in removing justice, "the immense fabric of human society . . . must in a moment crumble into atoms."⁸³ The enormous level of global corruption would surely qualify as a Smith-designated injustice, which must be dissipated by sovereigns through the establishment of "an exact administration of justice."⁸⁴ This sentiment was demonstrated on September 17, 2007, when the World Bank and the United Nations announced a joint effort to help developing countries recover the estimated \$1-\$1.6 trillion lost each year to criminal activity [such as drug trafficking, counterfeiting goods, money laundering and illegal arms trade] and tax evasion.⁸⁵ World Bank President Robert B. Zoellick indicated that, "[t]here should be no safe haven for those who steal from the poor. Helping developing countries recover the stolen money will be essential in funding social programs and putting corrupt leaders on notice that they will not escape the law."⁸⁶

79. See World Bank: Sustainable Development Environment Leader Appointed To Key Position (World Bank News Release No. 2007/120/SDN), available at <http://web.worldbank.org/WBSITE/EXTERNAL/ TOPICS/ENVIRONMENT /0,,contentMDK: 21106289 ~menuPK:162686~pagePK:210083~piPK:152538~theSitePK:244381,00.html> (last visited Nov. 6, 2007).

81. See PETER P. ROGERS, KAZI F. JALAL, AND JOHN A. BOYD, AN INTRODUCTION TO SUSTAINABLE DEVELOPMENT 205 (2006).

82. David Lieberman, *Adam Smith and Justice, Rights, and Law*, in THE CAMBRIDGE COMPANION TO ADAM SMITH 217 (Knud Haakonssen ed., 2006).

83. *Id.*

84. SMITH, *supra* note 1.

85. See U.N. Office of Drugs and Crime and The World Bank, *Stolen Asset Recovery (StAR) Initiative: Challenges, Opportunities, and Action Plan* (June 2007), available at <http://siteresources.worldbank.org/NEWS/Resources/Star-rep-full.pdf>

86. Press Release, U.N. Office on Drugs and Crime, World Bank and UNODC to Pursue Stolen Asset Recovery (Sep. 17, 2007), available at <http://web.worldbank.org/WBSITE/EXTERNAL/ TOPICS/EXTGOVANTICORR/0,,contentMDK:21475688~menuPK:3036139~pagePK:64020865~piPK:149114~theSitePK:3035864,00.html>.

This joint initiative, known as the “*Stolen Asset Recovery (StAR) Initiative: Challenges, Opportunities, and Action Plan*,” is designed to help developing countries retrieve stolen assets, as well as stem the flow of looted funds.⁸⁷ The initiative’s announcement recounts that corruption at the highest levels of government degrades public institutions, especially those involved in public financial management and financial sector governance.⁸⁸ It weakens or even destroys the private investment climate, and hampers delivery of basic health and education services, harming the poor the most⁸⁹

The World Bank announcement further notes that several countries in receipt of looted funds have no legal framework for returning them.⁹⁰ To deal with this and other related problems, “StAR calls for the ratification by all countries of the UN Convention against Corruption (UNCAC) - something that only half of the OECD and G-8 countries have done.”⁹¹ To deal with the injustice of corruption, Nobel Laureate Joseph E. Stiglitz includes three recommendations in his book *Making Globalization Work*:

(1) Every government needs to adopt a foreign corrupt practices act, and penalties should be imposed on governments that do not enact or enforce such laws. . . ; (2) Bribery should be viewed as an unfair competitive practice and, just like any other unfair competitive practice under WTO rules, be subject to sanction. . . ; (3) Other forms of bank secrecy, as corrosive as they are to societies around the world, as bad as they are for development, are evidently still permissible; after all, bank secrecy is another way by which corporations increase the after-tax profits that are enjoyed by corporation owners. The international community should quickly broaden the rules against bank secrecy to areas beyond terrorism. The G-8 could itself bring this about, simply by forbidding any of their banks to have dealings with the banks of any jurisdiction that did not comply.⁹²

(ii) *Measures to Improve the Practice of the Rule of Law*:

In 1776, Adam Smith emphasized security of property, sanctity of contractual obligations, and payment of debts as necessary for commerce to flourish:

Commerce and manufacturers can seldom flourish long in any state which does not enjoy a regular administration of justice, in which the people do not feel themselves secure in the possession of their property, in which the faith of contracts is not supported by law, and in which the authority of the state is not supposed to be regularly employed in enforcing the payment of debts from all those who are able to pay.⁹³

87. United Nations Office of Drugs and Crime and The World Bank, *supra* note 85.

88. *See id.*

89. *See id.*

90. *See id.*

91. *See id.*

92. JOSEPH STIGLITZ, *MAKING GLOBALIZATION WORK* 208-09 (2006).

93. SMITH, *supra* note 1, bk. V, ch. III, at 403.

The World Bank similarly defines “rule of law” as “measuring the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, the police, and the courts, as well as the likelihood of crime and violence.”⁹⁴ Helen Yu and Alison Guernsey suggest an understanding of the rule of law within the tradition of Adam Smith’s second duty of the sovereign, observing that the rule of law “can vary between different nations and legal traditions.”⁹⁵

Generally . . . it can be understood as a legal-political regime under which the law restrains the government by promoting certain liberties and creating order and predictability regarding how a country functions. In the most basic sense, the rule of law is a system that attempts to protect the rights of citizens from arbitrary and abusive use of government power.⁹⁶

G. Improving Law Schools, Judicial Academies, and the Administration of Justice

Gerald A. Sumida, former General Counsel of the Asian Development Bank, stressed the crucial importance of the judiciary in combating corruption and strengthening the rule of law:

In considering the most effective approaches and strategies for combating bribery, three interrelated areas of reform are crucial. The first targets the judiciary as the key institution in fighting corruption, the second comprises specific anti-corruption and anti-bribery measures, and the third relates to complementary institutional reforms.

. . .

Any effort at comprehensive judicial reform falls within a much broader societal context that centers on strengthening the rule of law in general, including public attitudes toward the rule of law and the legal order, and that recognizes the fundamental need to provide ordinary citizens with access to justice and the confidence that the judiciary will provide impartial, prompt, and clear results.⁹⁷

There is an immense importance in a long-term commitment to reform by the judiciary and citizens including law schools to achieve success:

The reform effort will be a long-term, multiyear program and must be effectively planned, staffed, funded, monitored, and

94. DANIEL KAUFMANN ET AL., *Governance Matters VI: Aggregate and Individual Governance Indicators 1996-2006*, (World Bank, Policy Research Working Paper No. 4280, 2007), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=999979.

95. HELEN YU & ALISON GURENSEY, UNIVERSITY OF IOWA CENTER FOR INTERNATIONAL FINANCE AND DEVELOPMENT, WHAT IS THE RULE OF LAW?, http://www.uiowa.edu/ifdebook/faq/Rule_of_Law.shtml.

96. *Id.*

97. Gerald A. Sumida, *Conditions for Effective Reform*, in TAKING ACTION AGAINST CORRUPTION IN ASIA AND THE PACIFIC 132 (Asian Dev. Bank & Org. for Econ. Co-operation and Dev. eds., 2002), available at <http://www.oecd.org/dataoecd/52/26/35137436.pdf>.

supported during that entire period. Changing the attitudes and culture of court and judiciary personnel is fundamental, as is providing them with the necessary material resources, knowledge, and skills to make the reforms work on a sustainable basis. This takes time and persistent efforts, and must be clearly anticipated. Quick fixes or one-shot efforts will inevitably prove to be unsustainable .

...

The public must accept and support any reform effort and perceive it as credible. Sources of support from citizens include established bodies such as bar, legal, and other professional associations; law, business, and other professional schools; chambers of commerce and other business organizations; and grassroots citizen groups and organizations.⁹⁸

IFIs have been active as external catalysts in support of justice reforms. In Guatemala, the United Nations Development Programme (UNDP) and the World Bank, among others, “helped promote the demand and supply linkages for access to justice service.”⁹⁹ In 1999 in the Republic of Maldives, the ADB approved a grant for \$995,000 entitled *Strengthening Legal Education and Judicial Training*.¹⁰⁰ This technical assistance grant helped to strengthen an Institute of Sharia Law, further develop the legal curriculum, and provide foreign training for three law faculty members. Additionally it financed training for four judges abroad. Within five years, eight female law students graduated, providing a stark contrast to the pre-existing female attorney population of three. In 2001, the ADB provided similar assistance to the Philippines with a grant of \$1.2 million, entitled *Strengthening the Independence and Defining the Accountability of the Judiciary*.¹⁰³ This technical assistance grant dealt with such issues as formulating a reform strategy, revenue management, human resources development, judicial education, judicial remuneration, judicial appointments, and judiciary standards and indicators.

98. *Id.* at 133.

99. WORLD BANK, REDUCING POVERTY ON A GLOBAL SCALE: LEARNING AND INNOVATING FOR DEVELOPMENT 112 (Blanca Moreno-Dodson ed.) (2005).

100. HAMID SHARIF & SURESH NANWANI, ASIAN DEVELOPMENT BANK OFFICE OF THE GENERAL COUNSEL, TECHNICAL ASSISTANCE COMPLETION REPORT 1 (2000), http://www.adb.org/Documents/TACRs/MLD/tacr_mld_3389.pdf.

103. See ASIAN DEVELOPMENT BANK, JUDICIAL MEDIUM-TERM DEVELOPMENT PLAN CYs 2006-2011 (ADB TECHNICAL ASSISTANCE NO. 3693-PHI (2004), <http://www.adb.org/Documents/Reports/Consultant/Judiciary-Dev-Plan/judiciary-dev-plan-2006-2011.pdf>).

V. A NEW EMPHASIS ON BUILDING LEGAL INFRASTRUCTURE

A. *Broad-based Approach Focusing on Law Schools and Judicial Academies*

To build a better functioning legal infrastructure, especially in the fragile states, IFIs, under the leadership of the World Bank, must place far greater emphasis on strengthening: (1) law schools and judicial academies, as well as continuing legal education of lawyers, and legal training for administrators, (2) legal empowerment for women and (3) the impoverished, (4) legal frameworks for good governance, especially in the areas of corporate governance, and (5) freer trade through fair trade often within the auspices of organizations like WTO, (6) environmental law measures to protect the ecological integrity of the earth for future generations, and (7) efforts to combat corruption through improved practice of the rule of law.

To deal with these challenges, IFIs need to convene conferences in Africa, Asia and the Pacific, Latin America, the Middle East, and Eastern Europe to establish standards and benchmarks for these seven pieces of legal infrastructure. IFIs need to assist in the development of quality systems including the following five components: standards, assessment, training, organization, and documentation. Benchmarks need to be established by ascertaining the standards employed by the best schools and judicial academies in each region. This approach would foster improvements in the outputs of the institutions, providing training to those who construct legal infrastructures in developing countries, especially those within fragile states.

Since the first priorities are to remove gender inequalities and reduce poverty, the first emphasis should be on Asia and Africa. Accordingly, the World Bank, in conjunction with other IFIs and kindred entities, need to focus on these two continents, then on Latin America and the Caribbean, the Middle East, and Eastern Europe. To provide continuing support, the World Bank should consider establishing “twining or linkage arrangements” among leading law schools and judicial academies in developed countries with comparable institutions in fragile states. Such twining or linkage arrangements would facilitate training of developing country law school and judicial academy faculties and administrators in partner institutions in developed countries, as well as transfers of knowledge, technology, and know-how between individuals and institutions in developing and developed countries. Such a linkage arrangement was useful in the Asian Development Bank technical assistance project in the Republic of the Maldives entitled *Strengthening Legal Education and Judicial Training*.¹⁰⁴

104. See SHARIF & NANWANI, *supra* note 100, at 2. See also Asian Dev. Bank, TA No. PAK 34329, TECHNICAL ASSISTANCE TO PAKISTAN FOR INSTITUTIONAL STRENGTHENING OF THE STATE BANK OF PAKISTAN (2001), <http://www.adb.org/Documents/TARs/PAK/R69-01.pdf> (delineating how twining arrangements have also been successful in various other technical

B. IFI Leadership in Improving Legal Education

The IMF needs to guide legal training in law schools and judicial academies to deal with monetary affairs, including issues related to banking and financial institutions. However, training and legal infrastructure training need also be given by other international organizations, such as the World Trade Organization, the International Labour Organisation, the UNDP, the United Nations Environmental Programme, and the International Union for the Conservation of Nature (IUCN), which should consider joining IFIs in assisting with this improvement in legal infrastructure.

The World Bank has collected much information concerning effective legal frameworks and institutions to alleviate poverty, including banking law, environmental and natural resources law, indigenous peoples, insolvency and creditor rights, international law, internet and communications technology (ICT) law, involuntary resettlement, justice for the poor, land law, land and justice institutions, privatization and the law, public health and HIV/AIDS.¹⁰⁵ These efforts must be commended. However a considerable amount of further training will be required before relevant institutions in the developing countries can become competent in the 13 poverty-alleviating topics delineated above.¹⁰⁶ A great many law schools throughout the developing world graduate a large number of lawyers, but these graduates need to be more excellently prepared to ensure that there are effective legal advocates for women, impoverished persons, and consumers, among others.

To accomplish these endeavors, a great many books in the language of each developing country will be required. These will include law books for lawyers, benchbooks for judges, and CDs for law students, as well as websites and other publications for business entrepreneurs, accountants, legislators, administrators, professors, and members of civil society.

The World Bank currently has 29 Vice-Presidents, including a Senior Vice-President and World Bank Group General Counsel, Vice-President for the World Bank Institute, and Vice-President and Network Head for Sustainable Development. To deal with the large legal infrastructure that needs to be developed, it would be essential to appoint a lawyer or judge to a newly established position of Vice-President for the Rule of Law and Administration of Justice. Such a position would be necessary because the current Group General Counsel leads a rule of law regime and therefore, current position specifications would likely preclude the addition of such additional duties. Moreover, an additional position would be necessary

assistance operations).

105. The World Bank, www.worldbank.org (follow "Topics" hyperlink; then follow "Law & Development" hyperlink) (last visited Feb. 19, 2008).

106. Advice on related topics is also provided by Foreign Investment Advisory Service, a multi-donor service of IFC, the private sector arm of the World Bank Group; the Multilateral Investment Guarantee Agency (MIGA); and the World Bank. See http://www.fias.net/ifcext/fias.nsf/Content/Advisory_Services.

because organizing on-going “legal infrastructure” educational activities in the current fragile states alone would place an undue and unwelcome burden on the General Counsel. Such activities would also place the General Counsel in an awkward position of advocating programs and projects while at the same time judging legal issues arising from such legal infrastructure development programs. It is essential that someone with appropriate legal skills be appointed, not an economist or other specialist, so that lawyers and judges in developing countries will respond more favorably to this proposed new initiative.

C. Civil Society Leadership

Civil society will need to support the aforementioned efforts because IFIs may not desire to undertake significant new efforts to improve worldwide legal infrastructure. Civil society has already supported similar efforts. For example, the American Bar Association has a significant program to improve the rule of law in developing countries.¹⁰⁷ However, much greater efforts are needed to succeed in improving legal infrastructure in developing countries, particularly in the fragile states.

It is unlikely that another international organization will be established in the near future to provide legal assistance along the lines advocated in this paper. Ideally, a private corporation should accept the challenge of developing this legal infrastructure while maintaining necessary independence to succeed. However, finding sufficient financing for such a private organization would constitute a significant impediment to utilization of a private corporation. Given the options available for reform, it is likely that IFIs provide the most realistic vehicles to provide the needed legal infrastructure reforms that current conditions mandate. Further IFI involvement would require a financial extension or reallocation of the more than the \$40 billion annually approved to finance projects, programs, and technical assistance operations in developing countries.

VI. CONCLUSION

If the World Bank were to lead efforts to provide additional IFI financing for legal infrastructure efforts, in an amount commensurate with the need for such infrastructure in the 34 fragile states and in other countries where many of the poorest two billion people live, there is a great likelihood of increased foreign direct investment in and trade with these developing countries. More importantly, though this may not entirely satisfy Adam Smith’s second duty of the sovereign, such investments in legal infrastructure would significantly improve the process of “protecting, as far as possible, every member of the society from the injustice or oppression of every other member of it” through

107. See ABA Rule of Law Initiative, <http://www.abanet.org/rol/> (last visited Feb. 19, 2008).

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the establishment of “an exact administration of justice”¹⁰⁸

108. SMITH, *supra* note 1, bk. V, ch. I, pt. 2, at 309.